SUPREME COURT, U. S.

APPENDIX.

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IN THE

Supreme Court of the United States

OCTOBER TERM, [redacted] 1970

No. [redacted] 208

UNIVERSAL BUILDERS, INC., ET AL.,
Petitioners,

vs.

SIDNEY AND JULIA CLARK, ET AL.,
Respondents.

APPENDICES TO THE PETITION FOR WRIT OF CERTIORARI.

OPINIONS BELOW.

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APPENDIX A.

CONTRACT BUYERS LEAGUE, an unincorporated voluntary association, et al., Plaintiffs, v. F & F INVESTMENT et al., Defendants.	No. 69 C 15. United States District Court N. D. Illinois, E. D.

May 21, 1969.

OPINION.

WILL, District Judge.

Plaintiffs, suing as a class, seek relief with respect to contracts for the sale of used residential property in the City of Chicago. Their complaint contains five counts. The first alleges violation of the Civil Rights Act of 1866, 42 U. S. C. §§ 1981, 1982, 1983, 1985(3), and of the Thirteenth and Fourteenth Amendments of the Constitution of the United States. Counts two and three allege, respectively, violations of the federal antitrust laws and of the antitrust laws of the State of Illinois. Count four of the complaint alleges violation of the federal securities laws. Count five alleges violation of the Illinois common law regarding fraud, usury and unconscionable contracts.

This Court has previously determined that under Rule 23 of the Federal Rules of Civil Procedure, plaintiffs can maintain this action as a class action; and the Court has

defined the plaintiff class, subject to future revision and refinement, to be composed of negroes who, since January 1, 1952, have entered into installment contracts for the purchase of used residential real estate in the City of Chicago.[1] The determination that a class action is appropriate was based on the recognition that the common questions of law and fact "predominate" over the individual questions. The essence of this complaint is that violations of law resulted from defendants' concerted exploitation of a condition of *de facto* racial segregation existing in the City of Chicago. Thus, the Court found that common questions of law and fact "predominate" within the terms of Rule 23 because it is alleged that the illegal advantage secured under any one contract depended on, was complemented by, and resulted from a concert and pattern of discriminatory activity including other similar contracts.

The Motions to Dismiss.

By way of motions to dismiss each and every count of the complaint, defendants have now challenged the sufficiency of the allegations.

Before proceeding with the required determination, it should be noted at the outset that when considering a motion to dismiss, a district court must consider all the allegations of fact contained in the complaint and it is uniformly recognized that when a court is making this determination, the complaint must be liberally construed.[2]

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1. Contract Buyers League v. F. & F. Investment, 69 C 15, (N. D. Ill. March 29, 1969).

2. In language characteristic of the determination of a motion to dismiss, the Seventh Circuit Court of Appeals has said, "* * * on a motion to dismiss, a complaint should be construed in the light most favorable to plaintiff with all doubts resolved in his favor; and in view of what is alleged, with all allegations well pleaded being taken as true, if it can reasonably be conceived that the plaintiff can make a case upon trial which would entitle him to

Count I—The Civil Rights Act of 1866, and the Thirteenth and Fourteenth Amendments.

The First count of the complaint relates essentially to the allegations, here taken as admitted for purposes of the motions to dismiss, that defendants exploited a system of *de facto* racial segregation that existed in the City of Chicago, and that by taking advantage of the scarcity of housing for negroes in the City of Chicago, defendants have secured unlawful advantage in the contracts executed by plaintiffs. As described in the complaint, the scheme of exploitation often included obtaining purchase money mortgages based on false and excessive appraisals of used residential property. The essence of the scheme is alleged to have been the purchase of residential properties from white homeowners and the resale, often in the nature of quick "turn-around" transactions, at greatly inflated prices to negro purchasers, who were disadvantaged by the system of *de facto* segregation and the resulting shortage of housing for negroes in Chicago. The terms of the contracts, especially the price, are alleged to represent unlawful profit gained through this pattern of exploitation.

The complaint also alleges in Count I a separate aspect of discriminatory activity. It alleges that some defendants amplified and fostered the *de facto* segregation on which the contracts depended. The complaint asserts that some of the defendants engaged in what is popularly known as "blockbusting," that some of the defendants stimulated and preyed on racial bigotry and fear by initiating and encouraging rumors that negroes were about to

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some relief the complaint should not be dismissed." Jung v. K & D. Mining Co., 260 F. 2d 607, 608 (7th Cir. 1958).

See also, United States v. Howell, 318 F. 2d 162, 166 (9th Cir. 1963); Thomas v. Atlantic Coast Line R. Co., 201 F. 2d 167, 170 (5th Cir. 1953); Cool v. International Shoe Co., 142 F. 2d 318, 320 (8th Cir. 1944).